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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.231 OF 2007
IN
NOTICE OF MOTION NO.2285 OF 2005
IN
L.C.SUIT NO.2317 OF 2005

Mohammad Sharif ... Appellant
versus
MCGB and others ... Respondents

Mr.R.V.Singh for appellant.
Mr.Xavier for MCGB.

CORAM : A.S.OKA, J.

DATE : 28th March 2007

PC :

1. Heard advocates appearing for the parties. The appellant is the original plaintiff. The challenge in the suit filed by the appellant before the Trial Court is to the action under section 55 of the Maharashtra Regional and Town Planning Act, 1966. In view of the settled position of law, a civil suit is, prima facie, not maintainable. In this view of the matter no fault can be found in the impugned order by which interim relief was not granted in favour of the appellant. Hence, appeal from order is

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dismissed. No orders as to costs. However, dismissal of the appeal will not prevent the appellant from adopting appropriate legal remedy for challenging the action of the Municipal Corporation.

2. In view of dismissal of Appeal from Order, Civil Application No.344 of 2007 does not survive.

3. It is clarified that it is not necessary for the appellant to wait for adopting appropriate remedy till the structure is demolished and the appellant can take the steps immediately.

(A.S.OKA, J.)